



September 24, 2004

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Lawrence H. Norton  
General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

MUR # 5544

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
2004 SEP 27 A 11:32

**RE: FEC COMPLAINT AGAINST MISSOURIANS FOR HANAWAY REGARDING  
ILLEGAL SOFT MONEY ELECTIONEERING COMMUNICATIONS AND  
COORDINATED COMMUNICATIONS**

Dear Mr. Norton:

The principal purpose of the Bipartisan Campaign Reform Act ("BCRA") was to sever the link between non-federal campaign funds and federal candidates and officeholders. A major Republican statewide campaign here in Missouri has engaged in soft money campaign activity that promotes and supports the Bush-Cheney re-election campaign, and which also appears to have been coordinated with that campaign. These activities constitute serious violations of the BCRA rules on electioneering communications and coordinated communications.

These violations are intended to benefit both the Hanaway campaign and the Bush campaign. Hanaway benefits by associating herself with the most prominent Republican candidate in the country, and by promoting herself and President Bush in front of a crowd of receptive, admiring supporters. The Bush campaign benefits through the use of non-federal money to build a positive impression of the President among the Missouri electorate through the exact same means. These violations are ongoing and accordingly we urge the Commission to act expeditiously to investigate and put a stop to them.

**I. FACTS**

Catherine Hanaway, a Republican candidate for Missouri Secretary of State, has produced and aired a television ad through her campaign committee Missourians for Hanaway, depicting herself addressing a friendly and responsive audience, accompanied by a clearly identified federal candidate, President George W. Bush. A transcription of the ad is enclosed, and the ad itself is also available on the Hanaway campaign's website at [http://www.hanaway.org/commercials\\_detail.asp?id=207](http://www.hanaway.org/commercials_detail.asp?id=207).

P.O. Box 719 • Jefferson City, Missouri 65102  
208 Madison Street • Jefferson City, Missouri 65101 • P: 573.636.5241 • F: 573.634.8176

Paid for by the Missouri State Democratic Committee, Rod Anderson, Treasurer  
Contributions or gifts to the Missouri State Democratic Committee are not tax deductible

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The ad opens with the president at a podium introducing Ms. Hanaway to the applause of the crowd and closes with the two candidates standing together and waving to the audience while they are jointly cheered and applauded. The presidential seal is conspicuously depicted on the podium.

The ad has run for several weeks on cable TV systems in Missouri, including less than 30 days before the Republican National Convention, and on information and belief we expect the ad to continue running in the weeks leading up to the general election. The disclaimer on the ad discloses only that it was "Paid for by Missourians for Hanaway, Susan Ely, Treas.," and does not indicate whether it was authorized by any federal candidate or candidate committee. On information and belief, we understand the ad to have been shot at a Bush-Cheney '04 campaign event held in St. Charles, Missouri on July 23, 2004.

## II. LAW AND APPLICATION

BCRA created one new category of campaign regulation, "electioneering communication," and authorized the Federal Election Commission ("the Commission") to promulgate new regulations on a pre-existing category, "coordinated communications." The funding and dissemination of this ad violates the Federal Election Campaign Act as amended by BCRA and the Commission's regulations with respect to both these categories.

### 1. Electioneering Communication

An electioneering communication is defined in the Commission's regulations as any broadcast, cable, or satellite communication that (1) refers to a clearly identified candidate for federal office; and (2) is publicly distributed within 60 days before a general election or within 30 days before a nominating convention for the office being sought by the candidate. 11 C.F.R. § 100.29(a). The "targeted to the relevant electorate" requirement does not apply to presidential candidates running nationwide.

Certain communications by state and local candidates are exempted from this definition, but only to the extent they do not promote, support, attack, or oppose a federal candidate. 11 C.F.R. § 100.29(c)(5), *referencing* 2 U.S.C. § 431(20)(a)(iii). This ad clearly promotes and supports presidential candidate George W. Bush by depicting him being warmly cheered and applauded by a noticeably appreciative crowd. This setting and the circumstances in which the president is shown therefore stand in clear contrast to the set of facts presented in AO 2003-25, and particularly the factual standards initially presented by the General Counsel's Office in the original draft of that opinion.

In their concurring opinion to that AO, Commissioners Thomas and McDonald quoted those standards, including the qualification that the Weinzapfel ad was approved in part because "[n]o audio/visual techniques [were] employed to influence the audience's views of Senator Bayh as a candidate." Here, the audio and visual techniques employed are clearly intended to influence the

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audience's views of President Bush, by depicting him both visually and audibly being cheered and applauded – indeed, being **promoted and supported** – by a warm, receptive audience.

This depiction of a federal candidate does not conform to the circumstances of AO 2003-25. Instead it promotes and supports President Bush, a federal candidate, and thus does not fit within the state and local candidate exemption of 11 C.F.R. § 100.29(c)(5). Accordingly the ad constitutes an electioneering communication, and must be funded and disclosed in a manner consistent with that status.

Since Missourians for Hanaway have disclosed the receipt of several corporate contributions, they appear to have violated 11 C.F.R. § 114.14(b)(1) by using funds received from corporations to air these electioneering communications.

## 2. Coordinated Communication

BCRA also directed the Commission to enact new regulations on “coordinated general public political communications.” The Commission has done so by promulgating 11 C.F.R. § 109.21, which sets forth a three-part test: (1) the communication must be paid for a third-party; (2) it must satisfy one or more of the four content standards set forth in 11 CFR 109.21(c); and (3) it must satisfy one or more of the six conduct standards set forth in 11 CFR 109.21(d).<sup>1</sup> If each of these three provisions is met, the communication constitutes an in-kind contribution from the funder to the referenced candidate, and must be paid for and disclosed as such.

Here, the first prong of this test is plainly satisfied since the disclaimer on the ad, which we believe to be accurate, indicates that Catherine Hanaway and her state campaign committee, Missourians for Hanaway, paid for the costs associated with the ad.

The second prong, the content standard, is also easily met. The fourth of the four content standards includes a “public communication” that refers to a clearly identified candidate for a Federal office, is publicly distributed or disseminated within 120 days of an election for Federal office, and is directed to voters within the jurisdiction of the clearly identified candidate. 11 C.F.R. § 109.21(c)(4). This ad clearly identifies presidential candidate George W. Bush, and has been running as recently as September 2nd, well within 120 days of this year's general election for president in the battleground state of Missouri.

The final prong, the conduct standard is also met. The second of the six conduct standards, “material involvement,” is satisfied if a candidate, candidate committee, political party or agent of any of these was materially involved in decisions regarding the content of the communication or the means and mode of the communication. The Weinzapfel opinion also determined that the

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<sup>1</sup>If the Commission's extant coordination regulations are not to be enforced under Shays v. FEC, Civ. No. 02-1984(CKK), mem. op. (D D.C., Sept. 18, 2004) (holding the bulk of the Commission's BCRA regulations to be invalid but declining to enjoin their enforcement), we wish to pose this allegation more broadly; specifically that the degree and nature of the stated conduct of the named respondents and the communications between them constitute coordination under the statute.


appearance of a United States Senator in an advertisement endorsing a candidate for mayor of a city in the Senator's state showed such a level of involvement by the Senator so as to satisfy the "materially involved" conduct standard virtually *per se*. AO 2003-25. "Given the importance of and potential campaign implications for each public appearance by a Federal candidate," the Commission held, "it is highly implausible that a Federal candidate would appear in a communication without being materially involved in one or more of the listed decisions regarding the communication." Specifically, these listed decisions include the content of the communication, the intended audience, the means or mode of the communication, the specific media outlet used, the timing or frequency of the communication, or the duration of a communication made by cable. 11 C.F.R. § 109.21(d)(2)(i)-(vi).

Since all three prongs of the coordination regulations are met, the facts alleged here indicate that Catherine Hanaway and her campaign for Secretary of State have used non-federal funds to make coordinated communications promoting and supporting herself and presidential candidate George W. Bush with respect to the hotly contested general election to be held in just 39 days. Since, as the Commission itself has concluded, it is "highly implausible" that President Bush, Bush-Cheney '04, Inc. and/or their agents were not "materially involved" in approving, scripting, or otherwise allowing the President to appear in this ad (and in fact may well have shot the footage themselves at a Bush-Cheney '04 campaign event), the Bush-Cheney campaign has received an illegal and unreported soft money in-kind contribution, paid for by Catherine Hanaway and her Missouri state campaign committee.

### III. PRAYER FOR RELIEF

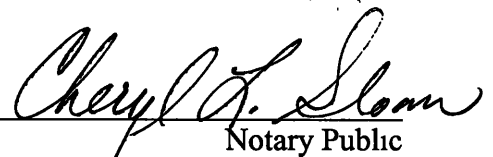
Complainant respectfully requests that the Commission fully investigate the campaign activities of Catherine Hanaway, President George W. Bush, Missourians for Hanaway, Bush-Cheney '04, Inc., and any such other of their agents and employees as may have been involved in regards to the unreported and illegal in-kind contribution made by Catherine Hanaway and her campaign committee to Bush-Cheney '04.

Sincerely,

  
Corey Dillon  
Executive Director  
Missouri Democratic Party  
208 Madison  
Jefferson City, Missouri 65105  
573-636-5241

Signed and attested before me this 24<sup>th</sup> day of September, 2004.

CHERYL L. SLOAN  
Notary Public - Notary  
STATE OF MISSOURI  
County of Cole  
My Commission Expires 12/31/06

  
Notary Public

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